

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review – Review of	)	MB Docket No. 09-182
The Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of	)	
The Telecommunications Act of 1996	)	
	)	
Promoting Diversification of Ownership	)	MB Docket No. 07-294
In the Broadcasting Services	)	

**REPLY COMMENTS OF TRIBUNE COMPANY, DEBTOR-IN-POSSESSION  
ON NOTICE OF PROPOSED RULEMAKING**

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April 17, 2012

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**I. INTRODUCTION AND SUMMARY**

More than a decade and a half have passed since Congress enacted Section 202(h) of the Communications Act and then-Chairman Reed Hundt publicly recognized that the time had come to revisit the prohibition on common ownership of newspapers and broadcast stations (the “NBCO Rule”). As Chairman Hundt recognized, the NBCO Rule limits the flexibility of broadcasters and publishers to adapt to these new competitive and technological changes. Since 1996, the Commission has repeatedly recognized that for much of the American public the harm caused by the NBCO Rule outweighs its purported benefits. Also since then, the Internet has matured into a virtual cornucopia of news, information and opinion from an endless variety of sources available to the great majority of Americans via high-speed broadband service providers.

Despite this information revolution, opponents of deregulation still cling to facts from days long past and plead with the Commission both to move slowly and to make no changes at all to the NBCO Rule. Incredibly, despite the burgeoning number of traditional and new sources of information and opinion since the NBCO Rule’s 1975 adoption, some are pushing for the

expansion of the NBCO Rule and more heavily disruptive divestitures. Even the Commission is retrenching from its prior efforts to liberalize the NBCO Rule and instead is considering proposals that would have the needless and unintended consequence of expanding the rule's reach. Paradoxically, retention of the prohibition is in direct contravention of disturbing conclusions reached by the FCC staff in the recent report on the future of media regarding the economic health of the newspaper publishing industry generally.<sup>1</sup> At the same time, additionally, the Commission has obtained Congressional authority to reallocate portions of television broadcast spectrum to other services because it believes that fewer stations may be necessary to serve the public interest.<sup>2</sup>

The evidence in this proceeding compels the opposite approach: the NBCO Rule is not serving the American public and the Commission should eliminate, or at least radically revise, the NBCO Rule. Further delay is contrary to the public interest.

First, the Commission must recognize that the Internet, now accessed by broadband services, has fundamentally altered the marketplace of ideas and the way in which news, information and opinion are delivered. Consumers now control their own access to news and opinion – the absolute reverse of the paradigm that is the foundation of the NBCO Rule – enabling them to select from numerous competing sources and options. Second, as the Commission has repeatedly acknowledged, cross-ownership of newspapers and broadcast stations can lead to economies that improve overall news coverage, thereby serving the public interest. Third, publishers of print media face severe financial difficulties and competitive

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<sup>1</sup> *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, Steven Waldman and the Working Group in Information Needs of Communities, at 35 (June 2011) (the “Waldman Report”).

<sup>2</sup> Middle Class Tax Relief and Job Creation Act, Pub. L. No. 112-96, §§ 6001 et seq. (Feb. 22, 2012).

pressure as they transition to electronic publication. The NBCO Rule serves as a unique, significant, unjustified transactional impediment to the reorganization of their businesses. Fourth, the competitive availability of numerous sources of both “traditional” and “new” media across virtually all markets irrespective of size make retention of the NBCO Rule obsolete, arbitrary and contrary to law. The Commission should relax, and not restrict, opportunities to expand local news and entertainment programming because the variety of media choices in the modern market is so extensive. In particular, the Commission should alter the media voice count that supports “duopoly” ownership of local television stations to be consistent with today’s media marketplace by reducing the number of voices and including different types of media voices. The Commission also should reject efforts to make attributable agreements that do not involve control of a station’s programming or operational decisions.

## **II. The NBCO Rule Should Be Repealed.**

### **A. No Further Delay is Required or in the Public Interest.**

Free Press and other organizations, claiming that enhancing diversity among broadcast licensees is a primary goal of the Commission, suggest that the Commission defer implementation of any media ownership rule changes until completion of a separate but related diversity review.<sup>3</sup> As it has in the past, and as discussed further below, Tribune supports efforts to foster ownership of media by women and minorities. The Commission, however, should not delay long overdue changes to the NBCO Rule or other changes to its rules mandated by Section 202(h) while it separately undertakes action on proposals for minority and female ownership.

Further delay on reform of the NBCO Rule is unconscionable, inexcusable and unlawful. The

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<sup>3</sup> Comments of Free Press at 9-10 (“If the Commission presently lacks the requisite data and research to address the court’s [diversity] concerns, it should defer a decision in the 2010 Review until it can effectively address them”); Comments of the Office of Communication of United Church of Christ, Inc et al at 38 (“Unless and until the FCC completes its [diversity] analysis, it must not relax any of the existing ownership rules”).

NBCO Rule persists in its mid-1970s form while the media landscape has completely changed, notwithstanding that the rule has been repeatedly discredited and held “no longer necessary in the public interest.”<sup>4</sup> The Commission has twice attempted to liberalize the NBCO Rule, only to be stalled by failures to justify adequately the intricacies of its 2003 revisions or to provide notice for the 2008 revisions. Now, another five years have elapsed since its last effort to modernize its treatment of newspaper-broadcast cross-ownership, and no further failure or delay should be tolerated by the Commission. As has been amply demonstrated by Tribune and others, the present media landscape requires a radical reversal in the FCC’s treatment of newspaper-broadcast cross-ownership.

Moreover, the Commission must simultaneously move forward with both its diversity initiative to foster media ownership by women and minorities and relaxing the NBCO Rule. This is exactly what the Third Circuit had in mind when it remanded provisions of the FCC’s Diversity Order,<sup>5</sup> emphasizing “that the actions required on remand should be completed within the course of the Commission’s 2010 quadrennial review of its media ownership rules.”<sup>6</sup> The Court’s directive could not be more clear. Finally, relaxing the NBCO Rule, as required by

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<sup>4</sup> *2002 Biennial Regulatory Review*, 18 FCC Rcd. 13620, 13767 (2003) (“[W]e find that a newspaper-broadcast combination cannot adversely affect competition in any relevant product market and, thus, we cannot conclude that the current [NBCO Rule] is necessary to promote competition. Similarly, we conclude that the evidence in the record of this proceeding demonstrates that combinations can promote the public interest by producing more and better overall local news coverage and that the current rule is not necessary to promote our localism goal .... [T]he record does not contain data or other information demonstrating that common ownership of broadcast stations and daily newspapers in the same community poses a widespread threat to diversity of viewpoint of programming.”); *2006 Quadrennial Regulatory Review*, 23 FCC Rcd. 2010, 2021, ¶ 18 (“*2008 Order*”) (“[W]e reaffirm the Commission’s decision to eliminate the blanket ban on newspaper/broadcast cross-ownership...); *Prometheus Radio Project v. FCC*, 652 F.3d 431, 473 (3d Cir. 2011) (Scirica, J. dissenting) (NBCO Rule is an “outdated and twice-abandoned ban”).

<sup>5</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, 23 F.C.C.R. 5922 (2007) (“Diversity Order”).

<sup>6</sup> *Prometheus Radio Project v. FCC*, 652 F.3d 431, 472 (3d Cir. 2011) (*Prometheus II*).

Section 202(h) and the Commission’s own prior findings and conclusions, will not impair any newly-adopted efforts to foster diverse ownership.

The comments of the Diversity and Competition Supporters (“DCS”), the leading proponent of specific diversity initiatives in this proceeding, are instructive. DCS comprises fifty organizations including the Minority Media and Telecommunications Council, National Council of La Raza, National Urban League, and the Rainbow PUSH Coalition and others.<sup>7</sup> After studying the issue, DCS has concluded that in practice the NBCO Rule has “little impact on minority ownership,”<sup>8</sup> and actually delivers meaningful public interest benefits, including more original journalism and better news and public service.<sup>9</sup> Accordingly, in view of the benefits of cross-ownership and the economic climate facing newspapers, DCS does not oppose liberalizing the NBCO Rule.<sup>10</sup>

The Commission and other organizations claiming to have an interest in ownership diversity should follow DCS’s lead and avoid further delay in eliminating the ban on cross-ownership in the NBCO Rule. Newspaper publishers and local broadcasters have already suffered too many years of delay and regulatory uncertainty, and there is no benefit from further delaying relief that has been warranted for more than a decade and will only aggravate the harm. Local media have an acute need and should be able to reorganize for the current, digital age – they can only do so in parity with other competing media if these woefully outdated constraints are lifted. As Congress directed in adopting Section 202(h), where competition has made

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<sup>7</sup> For a complete list, *see* Comments of DCS at 45-46.

<sup>8</sup> *Id.*, at 41.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, at 41-42.

limitations on common ownership of media properties unnecessary, the Commission must eliminate such restrictions in its quadrennial review proceeding without further delay.

**B. The Development of the Internet and Broadband Have Revolutionized the Media Landscape, And Support Elimination of the NBCO Rule.**

Some commenters suggest that the Internet and the resulting new media landscape do not necessitate any change in the Commission's media ownership rules. Free Press and other organizations seem to live in a parallel universe where the ARPANET never made the leap from obscure Defense Department research project to a virtually ubiquitous network of networks that makes available to consumers, at the touch of their fingertips, all traditional and newly-developed sources of news and information. Relying on the fact that traditional sources remain part of our national media landscape, these commenters urge the Commission to stick its head in the sand to act as though the Internet has not made available multiple traditional and additional sources and mechanisms for obtaining and distributing news and information in a competitive marketplace.<sup>11</sup> Such a backwards looking view must be rejected.

These commenters rely on one of the FCC's eleven media ownership studies, Matthew Hindman's *Less of the Same: The Lack of Local News on the Internet* (Study 6), which sought to bolster the demonstrably false proposition that the Internet provided only more of the same printed and broadcast press in electronic form. However, as Tribune demonstrated in its comments, Study 6 fails to consider the countless websites that address community or neighborhood issues on a hyper-local basis.<sup>12</sup> Study 6 examined websites on a DMA scale as though they functioned much like television stations, and would be relevant to consumers of

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<sup>11</sup> See, e.g., Comments of Free Press at 24; Comments of the National Hispanic Media Coalition et al at 37.

<sup>12</sup> See, e.g., Tribune Comments at 25-28 (presence of hyper-local websites in cross-owned markets).

news and information in much the same manner and scale on which television stations operate. The study's focus on DMAs means it fails to recognize that most websites function on a much smaller geographic scope than a DMA (community by community) or focus on much more specific areas of interest than a broadly marketed newspaper or broadcast station (such as government, education, health service, sports, weather, or the environment). Ignoring the many websites that provide information and opinion in a more targeted way than traditional media skews the study and makes it impossible for its conclusions to form the basis for continued Commission inaction.<sup>13</sup> It is true that traditional mass media more effectively communicate stories of appeal or interest on the very scope and in the very geographic region they target, but that is not probative on the inquiry of whether other sources, including websites, also contribute significant information and viewpoints.

Commenters seeking to preserve the anachronistic NBCO Rule also cite Pew's Project for Excellence in Journalism *How News Happens: A Study on the News Ecosystem of One American City* ("Pew Study").<sup>14</sup> The Pew Study examined six stories in Baltimore that it deemed "major news threads." Not surprisingly, these were primarily issues of city or statewide importance such as the Governor's budget proposal, the shooting of police officers, and a proposal to place listening devices on state buses. The Pew Study concluded that "while the news landscape has rapidly expanded, most of what the public learns is still overwhelmingly

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<sup>13</sup> Tribune Comments at 42-43.

<sup>14</sup> *How News Happens: A Study on the News Ecosystem of One American City*, available at [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens) (Jan. 11, 2010) (last visited Apr. 13, 2012).

driven by traditional media – particularly newspapers.”<sup>15</sup> According to the Pew Study, most of the new media coverage was “brief and derivative of other news accounts.”<sup>16</sup>

The Pew Study, however, only proves that in the Internet age countless sources can initiate, provide, question, investigate, comment and opine on the news and information provided by newspapers and broadcast stations. There is a symbiotic relationship in the instances cited by Pew, where traditional and new media play off each other to initiate and enhance news coverage. As an initial matter, one of the six “major news threads” actually was broken and initiated by an independent blog that covers Maryland politics, with traditional media later picking up the story and crediting the blog.<sup>17</sup> Because the Pew Study followed its subjective six “major news threads” and their development by traditional media, and did not seek to develop the significant contribution made by alternative media sources, the study simply ignored or missed the contribution initiated by local blogs and websites, which may have had equal or greater importance to the local audience. As such, it does not support commenters who argue that it demonstrates the need for continuing restrictive media ownership rules.

The study also highlights the benefits that Internet technology has brought through the direct distribution of information to the public, reversing the role traditional mass media played at the time the NBCO Rule was adopted. As an example, the Pew study cited the coverage of the police officers shooting, which was largely triggered by the Baltimore Police Twitter feed.<sup>18</sup> Historically, the police would have had no direct channel to the broader public, but Internet

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<sup>15</sup> How News Happens at 1.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 29-30.

<sup>18</sup> *Id.* at 16.

technology has provided such a platform. Traditional media always will have a role to play in sorting and analyzing such information, but the entrance of virtually cost-free Internet distribution to communicate directly to the public is important and profoundly alters the traditional “gatekeeper” role held by publishers and broadcasters. Likewise, many political leaders and candidates use social media to bypass the local and national media “filter” to communicate their view directly to the public. Indeed, even the websites maintained by traditional media now encourage the public to comment on stories produced by those media, and to provide links to alternative presentations or other viewpoints that can further a reader’s understanding of the issues being addressed. As Tribune highlighted in its comments, news consumers are also now much more self-selective in what news they consume.<sup>19</sup>

These studies lead some to conclude erroneously that the Internet provides nothing of significance beyond the repurposing of traditional media. This is simply not the case. In the five markets where Tribune has cross-owned properties, there is a diverse array of media outlets including new media sources.<sup>20</sup> For example, the New York DMA has at least 25 different independent websites that attracted more than 50,000 unique visitors in one year, with more than half of these websites attracting more than 100,000 unique visitors. In both Los Angeles and Chicago, almost 20 websites attracted more than 20,000 unique visitors, with the largest of these attracting more than one million visitors. The smaller South Florida and Hartford markets each

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<sup>19</sup> Tribune Comments at 32.

<sup>20</sup> See Tribune Comments at 25-28; Tribune NOI Comments at 18-68; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428AEL, MB Docket No. 10-104; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADP, MB Docket No. 10-104; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADV, MB Docket No. 10-104; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADY, MB Docket No. 10-104; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADX, MB Docket No. 10-104.

also have almost 20 independent websites that attracted similar numbers of unique visitors, especially when they are considered as a percentage of their market populations. These outlets not only provide new viewpoints not presented by traditional media in these markets, but also spur traditional media to better serve their audiences. And these websites do not include countless hyper-local or niche content websites that contribute to the discussion of issues that are narrower in scope or more geographically limited.

As we stand today, it is beyond dispute that non-traditional media websites add to the media environment and reduce the need for the NBCO Rule. Tribune has performed simple online searches for coverage of local issues in Tribune's cross-owned markets using Google and Yahoo's search engines to further prove the point. The results of these searches make clear that there are dozens of Internet sources addressing important local issues in addition to the coverage of traditional media.

One currently important public issue in the Chicago area is the recently announced closure of the Fisk and Crawford coal-fired electric power plants, which are the only coal-fired power plants still located in a major city in the United States and considered by many to be a significant source of air pollution in Chicago. Coverage of the planned closure can be found on over 40 websites, including not only websites affiliated with major newspapers and television stations such as *The Chicago Tribune*, *The Chicago Sun-Times*, and local PBS, CBS, NBC, and Fox affiliates,<sup>21</sup> but also (1) smaller newspapers such as the *Chicago Journal* and other online

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<sup>21</sup> BJ Lutz and Natalie Martinez, *Residents Rejoice Closure of Fisk, Crawford Coal Plants*, NBC 5 Chicago (Feb. 29, 2012) available at <http://www.nbcchicago.com/news/green/fisk-crawford-coal-plants-to-close-140925053.html>; Fran Spielman, *Emanuel brokers deal to shut two polluting coal fire plants*, Chicago Sun-Times (Feb. 28, 2012) available at <http://www.suntimes.com/news/10943296-418/emanuel-brokers-deal-to-shut-two-polluting-coal-fire-plants.html>; Juliet Eilperin, *Utilities announce closure of 10 aging power plants in Midwest, East*, Wash. Post (Feb. 29, 2012) available at [http://www.washingtonpost.com/national/health-science/utilities-announce-closure-of-10-aging-power-plants-in-midwest-east/2012/02/29/gIQANSLEiR\\_story.html](http://www.washingtonpost.com/national/health-science/utilities-announce-closure-of-10-aging-power-plants-in-midwest-east/2012/02/29/gIQANSLEiR_story.html); 2 *SW Side Coal Plants Agree to Shut*

sources of local and national news such as Chicagoist.com, Progress Illinois, and the Chicago Current;<sup>22</sup> (2) numerous business and industry group websites such as those of Chicago Business, Energy Digital, and ElectroIQ.com;<sup>23</sup> (3) websites of environmental and health advocacy groups, such as the Natural Resources Defense Council, the Sierra Club, Greenpeace, Chicago Clean Power Coalition, and Respiratory Health Association of Chicago;<sup>24</sup> (4) and the website of Northwestern University.<sup>25</sup>

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*Down Early*, CBS Chicago (Feb. 29, 2012) available at <http://chicago.cbslocal.com/2012/02/29/report-coal-fired-power-plants-to-be-phased-out/>; Michael Hawthorne and Kristen Mack, *Chicago's 2 coal-fired plants to shut down sooner than expected*, Chicago Trib. (Feb. 29, 2012) available at [http://articles.chicagotribune.com/2012-02-29/news/chi-chicagos-two-coalfired-power-plants-to-shut-down-sooner-20120229\\_1\\_fisk-plant-crawford-plant-midwest-generation](http://articles.chicagotribune.com/2012-02-29/news/chi-chicagos-two-coalfired-power-plants-to-shut-down-sooner-20120229_1_fisk-plant-crawford-plant-midwest-generation); *Chicago's Coal Plants to Close: Mayor's Ultimatum Leads to Environmentalists' Win*, Huffington Post (Feb. 29, 2012) available at [http://www.huffingtonpost.com/2012/02/29/chicagos-coal-plants-to-c\\_n\\_1310308.html](http://www.huffingtonpost.com/2012/02/29/chicagos-coal-plants-to-c_n_1310308.html); Jeff Biggers, *Historic Victory: Coal Free Chicago Will Electrify Clean Energy Movement*, Huffington Post (Feb. 29, 2012) available at [http://www.huffingtonpost.com/jeff-biggers/chicago-clean-power-coalition\\_b\\_1310079.html](http://www.huffingtonpost.com/jeff-biggers/chicago-clean-power-coalition_b_1310079.html); *Coal Plants in Pilsen, Little Village Shutting Down*, myFOXchicago (Feb. 29, 2012), available at <http://www.myfoxchicago.com/dpp/news/metro/coal-plants-chicago-shutting-down-pilsen-little-village-fisk-crawford-midwest-generation-20120229>; *Coal Plants*, wttw (Feb. 29, 2012) available at <http://chicagotonight.wttw.com/tags/coal-plants>.

<sup>22</sup> Ben Meyerson, *Pilsen power plant shutting down*, Chicago Journal (Feb. 29, 2012) available at [http://www.chicagojournal.com/News/02-29-2012/Pilsen\\_power\\_plant\\_shutting\\_down](http://www.chicagojournal.com/News/02-29-2012/Pilsen_power_plant_shutting_down); Chuck Sudo, *Deal Reached To Shut Down Fisk, Crawford Coal Plants Sooner Than Expected*, Chicagoist (Feb. 29, 2012) available at [http://chicagoist.com/2012/02/29/deal\\_reached\\_to\\_shut\\_down\\_fisk\\_craw.php](http://chicagoist.com/2012/02/29/deal_reached_to_shut_down_fisk_craw.php); Matthew Blake, *Pilsen, Little Village Residents Cheer Coal Plant Closings*, Progress Illinois (Mar. 1, 2012) available at <http://progressillinois.com/posts/content/2012/02/29/pilsen-little-village-residents-cheer-coal-plant-shut-down>; Geoff Dougherty, *Midwest Generation to close Fisk, Crawford coal-fired plants early*, Chicago Current (Feb. 29, 2012) available at <http://www.chicagocurrent.com/news/33515-Midwest-Generation-to-close-Fisk-Crawford-coal-fired-plants-early>.

<sup>23</sup> Tracey A. Smith, *Historic Win for Clean Air as Chicago's Fisk and Crawford Coal Plants Announce Retirement*, Solar Thermal Magazine (Feb. 29, 2012), available at <http://www.solarthermalmagazine.com/2012/02/29/historic-win-for-clean-air-as-chicagos-fisk-and-crawford-coal-plants-announce-retirement/>; Carin Hall, *Chicago's Victory: An End to Coal*, energydigital (Feb. 29, 2012) available at [http://www.energydigital.com/global\\_mining/chicagos-victory-an-end-to-coal](http://www.energydigital.com/global_mining/chicagos-victory-an-end-to-coal).

<sup>24</sup> Henry Henderson, *Coal Clunkers Closing: Public Pressure Finally Shuttters Chicago's Notorious Fisk and Crawford Coal Plants*, SWITCHBOARD Natural Resources Defense Council Staff Blog (Feb. 29, 2012), available at [http://switchboard.nrdc.org/blogs/hhenderson/coal\\_clunkers\\_closing\\_public\\_p.html](http://switchboard.nrdc.org/blogs/hhenderson/coal_clunkers_closing_public_p.html); Press Room, Sierra Club available at <http://www.sierraclub.org/pressroom/media/2011/2011-09-coal-ad.aspx> (ads highlighting Chicago coal-fired power plant health risks); *Victory!!! MWGEN to Retire Fisk and Crawford*, Chicago Clean Power Coalition available at <http://cleanpowerchicago.org/>; Abby Fenton, *Major Coal Victory for Chicago Youth Organizers*, Will Steger Foundation (Mar. 1, 2012) available at <http://www.willstegerfoundation.org/component/k2/item/1456-major-coal-victory-for-chicago-youth-organizers>; *Victory for clean air and healthy lungs!*, Respiratory Health Association available at <http://www.lungchicago.org/air-quality-power-plants/>; *Press on the Plants Closing Big Announcement*, Pilsen Environmental Rights and Reform Organization (PERRO) available at <http://pilsenperro.org/?p=269>; *Fisk &*

In Hartford during the first quarter of 2012 the State General Assembly considered raising the minimum wage by 50 cents in 2013 and another 50 cents in 2014. There was considerable public debate over the pros and cons of the proposal. Discussion of the issue, both fact and opinion-based, continued on numerous websites, including those associated with state and local newspapers such as the New Haven Register, West Hartford News, Hartford Courant, Mystic River Press, Journal Inquirer, and Norwich Bulletin;<sup>26</sup> e-newspapers such as theday.com;<sup>27</sup> online websites devoted to state politics and government such as CT Mirror and CT News Junkie;<sup>28</sup> union blogs such as the AFL-CIO blog;<sup>29</sup> online business sources such as

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*Crawford Generating Stations, Quit Coal* available at <http://quitcoal.org/community-forum/fisk-crawford-generating-stations>; *Midwest Generation Agrees to Shut Down Fisk and Crawford Coal Plants*, Greenpeace available at <http://www.greenpeace.org/usa/en/media-center/news-releases/Midwest-Generation-Agrees-to-Shut-Down-Fisk-and-Crawford-Coal-Plants/>.

<sup>25</sup> Kristen Kellar, *Coal plant closure sparks cheers from environmental groups*, Medill Reports Chicago (Feb. 29, 2012) available at <http://news.medill.northwestern.edu/chicago/news.aspx?id=201685>.

<sup>26</sup> Johnny E. Williams, *Higher Minimum Wage Good for Workers, Economy*, Hartford Courant (Feb. 19, 2012) available at <http://www.courant.com/news/opinion/hc-op-williams-raise-connecticuts-minimum-wage-021-20120219,0.6346135.story>; Wade Gibson, *FORUM: Higher minimum wage good for economy, workers*, New Haven Register (Feb. 29, 2012) available at <http://www.nhregister.com/articles/2012/02/29/opinion/doc4f4eaf9e91bbe185109552.txt>; Jordan Fenster, *Mixed feelings at public hearing on raising Connecticut's minimum wage*, West Hartford News (March 4, 2012) available at <http://www.westhartfordnews.com/articles/2012/03/04/news/doc4f4d6824674ad376158185.txt>; Chris Powell, *Minimum wage dreams; and a scalper exposed*, Journal Inquirer (Mar. 3, 2012) available at [http://www.journalinquirer.com/articles/2012/03/03/chris\\_powell/doc4f50df727ed37559434136.txt](http://www.journalinquirer.com/articles/2012/03/03/chris_powell/doc4f50df727ed37559434136.txt); *Our View: Timing wrong for raising minimum wage*, Norwich Bulletin (Feb. 26, 2012) available at <http://www.norwichbulletin.com/editorials/x1481609700/Our-View-Timing-wrong-for-raising-minimum-wage#axzz1o6E4IAUb>; The Westerly Sun available at <http://www.thewesterlysun.com/search/?t=article&q=minimum+wage> (multiple articles on the minimum wage).

<sup>27</sup> Lee Howard, *Advocacy group: State minimum wage has not kept up with cost of living*, theday.com (Feb. 29, 2012) available at <http://www.theday.com/article/20120229/BIZ02/302299969>.

<sup>28</sup> Mark Pazniokas, *Connecticut's minimum wage among the highest*, the CT Monitor (Feb. 2, 2012) available at <http://ctmirror.org/story/15286/connecticuts-minimum-wage-among-highest>; Christine Stuart, *Closing Time? Minimum Wage Proposal Still Worries Restaurant Owners*, CT News Junkie (Feb. 28, 2012) available at [http://www.ctnewsjunkie.com/ctnj.php/archives/entry/restaurant\\_owners\\_still\\_unhappy\\_with\\_minimum\\_wage\\_proposal/](http://www.ctnewsjunkie.com/ctnj.php/archives/entry/restaurant_owners_still_unhappy_with_minimum_wage_proposal/)

<sup>29</sup> *Corporate Front Groups Battle State Minimum Wage Hikes*, AFL-CIO (Feb. 27, 2012) available at <http://www.aflcio.org/Blog/Political-Action-Legislation/Corporate-Front-Groups-Battle-State-Minimum-Wage-Hikes>.

HartfordBusiness.com, the Human Resources Journal, and the Connecticut Business and Industry Association;<sup>30</sup> websites associated with a number of television stations;<sup>31</sup> and the Connecticut General Assembly GOP website.<sup>32</sup>

The ability to learn about local news and issues on the Internet is not a new, but a mature, phenomenon. As Tribune demonstrated during the prior FCC quadrennial review proceeding, coverage in the Los Angeles market of the important local issue of health care service problems at the Martin Luther King, Jr./Drew Medical Center (the “Medical Center”) was covered by multiple traditional and non-traditional sources.<sup>33</sup> An online search conducted in 2007 for stories related to the Medical Center made clear that even two years after the story first broke, there were dozens of sources of information about the Medical Center, including the reforms the Medical Center has undergone since the story first broke. These non-traditional media sources included (1) The Los Angeles County Department of Health Services that administered the

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<sup>30</sup> *CT small biz rails against minimum wage hike*, Hartford Business Journal (Feb. 28, 2012) available at <http://www.hartfordbusiness.com/news22864.html?Type=search>; *Connecticut’s Minimum Wage Could Climb*, Human Resources Journal (Mar. 16, 2012) available at <http://www.humanresourcesjournal.com/2012/03/connecticuts-minimum-wage-could-climb/>; *Minimum Wage Hike Approved by Labor Committee*, CBIA Government Affairs (Mar. 16, 2012) available at [http://gov.cbia.com/issues\\_policies/article/minimum-wage-hike-approved-by-labor-committee](http://gov.cbia.com/issues_policies/article/minimum-wage-hike-approved-by-labor-committee).

<sup>31</sup> News 8 WTHN.com available at [http://www.wtnh.com/search/SERP?q=minimum+wage&t=web&submit=Search&s=wtnh.com&o=relevance&google\\_web=google](http://www.wtnh.com/search/SERP?q=minimum+wage&t=web&submit=Search&s=wtnh.com&o=relevance&google_web=google) (multiple stories on minimum wage); *Minimum Wage Could Climb in 2013*, NBC Connecticut (Mar. 15, 2012) available at <http://www.nbcconnecticut.com/news/local/Minimum-Wage-Connecticut-Malloy-142852635.html>; *Committee Votes to Raise Minimum Wage*, CBS Connecticut (Mar. 15, 2012) available at <http://connecticut.cbslocal.com/2012/03/15/committee-votes-to-raise-minimum-wage/>; *Conn. Committee passes minimum wage increase*, Eyewitness News 3 (Mar. 15, 2012) available at <http://www.wfsb.com/story/17169807/conn-committee-passes-minimum-wage-increase?clienttype=printable>.

<sup>32</sup> *Rep D’Amelio Testifies on Minimum Wage Issue*, Connecticut House Republicans (Feb. 29, 2012) available at <http://cthousegop.com/2012/02/rep-damelio-testifies-on-minimum-wage-issue/>.

<sup>33</sup> This search was conducted and presented during the Commission’s 2006 quadrennial review proceeding. As the search is more than five years old, these stories may no longer be maintained by the websites last visited more than five years ago.

hospital;<sup>34</sup> (2) alternative online newspapers like BlackPressUSA.com, New America Media, LA Voice.org, the Daily Trojan, the Compton Bulletin, Los Angeles City Beat, the Claremont Institute, National Review Online, the Los Angeles Sentinel, and NPR;<sup>35</sup> (3) health coverage organizations and associations like LA Health Action, Hospital Association of California, California Healthline, and the California Medical Association;<sup>36</sup> (4) associations that provided opinion pieces, articles and blogs, like LAMom, National Society for Hispanic Professionals, and the Progressive Jewish Alliance;<sup>37</sup> and (5) websites of governmental organizations and elected representatives.<sup>38</sup>

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<sup>34</sup> [www.ladhs.org/mlk/](http://www.ladhs.org/mlk/) (containing releases “King/Drew officials detail improvements, look forward to future;” “2005 King/Drew Organizational Improvement Plan;” “Recommendation for the Future of King/Drew Medical Center”).

<sup>35</sup> Kevin Herrera, *King/Drew May Lose Its Accreditation*, BlackPressUSA.com available at <http://www.blackpressusa.com/news/Article.asp?SID=3&Title=National+News&NewsID=3454>; Gene C. Johnson, Jr., *Awaiting Word n King/Drew’s Fate*, New America Media (October 5, 2005) available at [http://news.newamericamedia.org/news/view\\_article.html?article\\_id=02847b676f5c5a3eb0ed394530e8f9a1](http://news.newamericamedia.org/news/view_article.html?article_id=02847b676f5c5a3eb0ed394530e8f9a1); *14 Out of 23 Ain’t Bad; King/Drew Blows It Again*, LA Voice.org available at <http://lavoice.org/article2231.html>; [www.dailytrojan.com/media/storage/papers679/news/2005/02/10/News](http://www.dailytrojan.com/media/storage/papers679/news/2005/02/10/News) (covering issues over loss of accredited status”); [www.thecomptonbulletin.com/news03\\_110806/index.html](http://www.thecomptonbulletin.com/news03_110806/index.html) (“A Financial Stay of Sorts for King/Drew”); [www.lacitybeat.com/article.php?id=1418&IssueNum=77](http://www.lacitybeat.com/article.php?id=1418&IssueNum=77) (“Trauma Drama- county supervisors close the King/Drew trauma unit despite community outcry”); [www.claremont.org/blogs/blogid.2091/blog\\_detail.asp](http://www.claremont.org/blogs/blogid.2091/blog_detail.asp) (“The King/Drew Scandal and Clarence Thomas: Preposterous Patt Morrison”); Jack Dunphy, *Life & Death in South L.A.*, National Review Online (Apr. 8, 2004) available at <http://old.nationalreview.com/dunphy/dunphy200404080849.asp>.

<sup>36</sup> LA Health Action, *Issues Library* available at <http://lahealthaction.org/index.php/library> (articles on LA healthcare, including “Who Will Care For South Central LA?”); James Lott, *What to do about King-Drew Medical Center*, Hospital Association of Southern California available at <http://www.hasc.org/blog-entry/what-do-about-king-drew-medical-center>; California Healthline, *Future of King/Drew Medical Center Considered* available at <http://www.californiahealthline.org/Articles/2006/9/27/Future-of-KingDrew-Medical-Center-Considered.aspx>; California Medical Association, *LACMA and CMA Statements on King/Drew Medical Center and the Threat to L.a. [sic] County Health Care* available at <http://www.cmanet.org/news/press-detail?article=lacma-and-cma-statements-on-kingdrew-medical-c>.

<sup>37</sup> [http://lamom.blogs.com/lamom/2005/02/kingdrew\\_medica.html](http://lamom.blogs.com/lamom/2005/02/kingdrew_medica.html) (former Medical Center nurse comments on practices at hospital); National Society for Hispanic Professionals available at [www.nshp.org/health/](http://www.nshp.org/health/) (search for stories on King/Drew Medical Center); Catherine Schneider, *King/Drew closing spotlights crisis in health care*, Jewish Journal (Nov. 16, 2006) available at [www.pjalliance.org/article.asp?ID=328&CID=20](http://www.pjalliance.org/article.asp?ID=328&CID=20) (Op-ed by Progressive Jewish Alliance Assistant Director).

<sup>38</sup> Congresswoman Maxine Waters, *US Rep Maxine Waters Embraces County’s Recommended Plan (Oct. 4, 2006)* available at [http://www.house.gov/apps/list/press/ca35\\_waters/PR061004\\_kingdrew.html](http://www.house.gov/apps/list/press/ca35_waters/PR061004_kingdrew.html) (Congresswoman Waters’ Press Statement on King/Drew).

While they may be limited and anecdotal, these examples demonstrate the wide availability of diverse sources for news, information and opinion available online. On virtually any issue, in any community, the Internet enriches the conversation by offering national, regional and hyper-local websites that serve as alternative sources of information and debate, as well as websites that focus on specific types of local issues, be they related to politics, health, labor, education, public safety, culture, sports or other issues of interest to the local community. Traditional media cannot ignore the competitive check provided by these sources of information and opinion, and Free Press and other commenters must acknowledge the impact and importance of these sources. As the Commission must recognize, the diversity of sources of news, information and opinion flourishing on the Internet in this new electronic media age requires a substantial liberalization of the NBCO Rule, if not wholesale elimination. In today's electronic media age, it would be impossible for any media entity to dominate debate on issues of local public importance. The NBCO Rule with all of its unintended ill effects, no longer serves any legitimate public interest.

**C. Cross-ownership Enhances the Presentation of News Without Decreasing Viewpoint Diversity in a Market.**

**1. Cross-ownership fosters delivery of more news and information to the public without decreasing the viewpoint diversity in the market.**

Relying only on Study 6 and theoretical models, Free Press argues that where cross-ownership is permitted, other traditional outlets decrease the amount of news and information that is provided, thus resulting in a loss of diversity.<sup>39</sup> Free Press also asserts that cross-owned media do not necessarily produce more and better coverage of local news.<sup>40</sup> These assertions are

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<sup>39</sup> Comments of Free Press at 25-26.

<sup>40</sup> *Id.* at 29-30.

simply untrue. In attacking the benefits of cross-ownership recognized by the Commission since the adoption of the NBCO Rule, and supported by comment and prior study in two previous quadrennial reviews,<sup>41</sup> Free Press ignores both the critiques of its studies and demonstrated benefits of cross-ownership.

In its Comments, Tribune has shown that the only studies that suggest that cross-ownership does not produce more and higher quality news or that cross-ownership results in an overall decrease in diversity in a market are based on flawed assumptions regarding bias.<sup>42</sup> The evidence is otherwise – several studies have shown that in specific markets, cross-ownership increases the amount of news and information on the commonly-owned media, without any material decrease in news and information provided by other outlets.<sup>43</sup> In short, the only study that hypothesizes that cross-ownership results in less overall news in a market is Study 9 by Brocas, Carrillo and Willkie. The authors acknowledge that theirs is a theoretical study that presumes media owners will have a predetermined view on any issue.<sup>44</sup> On the contrary, at least four studies in this proceeding and the Commission’s prior quadrennial review conclude that cross-ownership can result in the presentation of additional and higher quality news without adversely impacting diversity in the market.<sup>45</sup> Free Press and other opponents of cross-ownership reform do not cite any additional evidence to support the claims that cross-ownership

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<sup>41</sup> As the Commission has held, “combinations can promote the public interest by producing more and better overall local news coverage.” *2003 Order*, ¶ 368.

<sup>42</sup> *See* Comments of Tribune at 13, 21-23.

<sup>43</sup> *Id.* at 13, 17-19.

<sup>44</sup> *See id.* at 21-22.

<sup>45</sup> *See id.* at 17-21 (discussing the Milyo Report from the 2006 quadrennial Review and Studies 1, 8(A) and 8(B) from the present quadrennial review).

does not result in additional or enhanced news coverage, or that cross-ownership has an actual adverse impact on the diversity of viewpoints expressed beyond that already refuted by Tribune and other parties. Simply put, this is a bare assertion not supported by the weight of the evidence in the proceeding.

Most importantly, Free Press and others cannot dispute what Tribune has on multiple occasions, and in detail in this proceeding, shown: cross-ownership delivers improved and expanded coverage of local issues of public importance.<sup>46</sup> In fact, television stations in four of Tribune's five cross-owned markets produce more local news than any other local station in these markets; the competing stations nevertheless have continued to produce competitive amounts of news, notwithstanding Tribune's presence.<sup>47</sup> Commonly-owned newspapers and broadcast stations produce more news, and because local competition in these markets remains vibrant notwithstanding the cross-ownership of Tribune's media properties, there is no resulting loss of diversity.<sup>48</sup>

In its comments, the National Hispanic Media Coalition ("NHMC") questions the general "quality" and editorial integrity of Tribune's Los Angeles media properties and asserts that the

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<sup>46</sup> *Id.* at 14-17. Tribune also has shown that its cross-ownership does not result in unilateral positions on issues, a fact confirmed in the Milyo Report provided in the 2006 quadrennial review. *Id.* at 17-19 (discussing the Milyo Report and Tribune's coverage of presidential elections during the past election cycle).

<sup>47</sup> Application for Consent to Assignment of Broadcast Station, Amendment to Exhibit 16, File No. BALCDT-20100428AEL, MB Docket No. 10-104 at 19-21; Application for Consent to Assignment of Broadcast Station, Amendment to Exhibit 16, File No. BALCDT-20100428ADP, MB Docket No. 10-104 at 15-16; Application for Consent to Assignment of Broadcast Station, Amendment to Exhibit 16, File No. BALCDT-20100428ADV, MB Docket No. 10-104 at 16-17; Application for Consent to Assignment of Broadcast Station, Amendment to Exhibit 16, File No. BALCDT-20100428ADX, MB Docket No. 10-104 at 16-17; *See also 2006 Quadrennial Regulatory Review*, MB Docket No. 06-121, *Comments of Tribune Company* at 38, 49, 58, and 74-75.

<sup>48</sup> *Id.* at 14-17, 24-27.

Los Angeles market is not sufficiently diverse.<sup>49</sup> Even the statistics NHMC cites prove the contrary. NHMC itself identifies 23 independent television station voices in the Los Angeles DMA<sup>50</sup> but ignores the hundreds of radio station voices in the DMA, as well as the other sources of news and information in Los Angeles. In addition to the 23 television stations identified by NHMC, there are 196 radio stations with 83 individual owners, 19 daily newspapers with nine different publishers, and 98 weekly newspapers with 54 different owners.<sup>51</sup> MVPD penetration in the market approaches 90 percent with local cable-only channel offerings that include the California Channel, a statewide version of C-SPAN, and LA City View, a City of Los Angeles government channel.<sup>52</sup> And of course, online sources add to the mix. In addition to the websites maintained by these traditional media entities noted above, local independent news websites are viewed by millions of residents including [www.laist.com](http://www.laist.com) with almost 3 million visitors in 2009, five other independent sites with over 100,000 unique visitors during that period, and twelve more websites with between 20,000 and 99,999 unique visitors.<sup>53</sup>

To the extent NHMC seeks to foster additional minority and female ownership of traditional media in Los Angeles, the proposals of DCS are far more likely to achieve success than NHMC's attempts to prop up an outdated cross-ownership restriction.<sup>54</sup> The NBCO Rule neither encourages nor discourages minority ownership of any broadcast licensee, and its

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<sup>49</sup> NHMC Comments at 6-9.

<sup>50</sup> *Id.* at 11. NHMC notes that seven of these stations have "people of color among their owners." *Id.*

<sup>51</sup> Comments of Tribune at 26.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Comments of DCS at 27-37.

relaxation or elimination will not lessen incentives for would-be minority or female licensees to enter the market. As Tribune noted above, consistent with this view, DCS does not oppose relaxation of the NBCO Rule, recognizing that its impact on ownership of media by women and minorities is insignificant.

NHMC also has asserted, without citation or support, that KTLA provides poor local coverage of issues in its DMA and that KTLA anchors often simply read stories directly from the Los Angeles Times.<sup>55</sup> NHMC's claims are factually inaccurate, and are a transparent and completely inappropriate attempt to have the FCC intrude on traditionally protected First Amendment rights with respect to the selection and airing of programming. As Tribune has repeatedly demonstrated, throughout more than a decade of these periodic reviews, when the *LA Times* and KTLA combine efforts, KTLA's news broadcasts are enhanced. No professional news operation in an intensely competitive market like Los Angeles could survive, let alone prosper, by simply repeating newspaper stories, even stories that regularly win journalism awards and public recognition like those in the *LA Times*.<sup>56</sup> KTLA(TV) has been a leader in providing local and cutting-edge newsgathering since its inception.<sup>57</sup> KTLA(TV) currently broadcasts 55 hours of local news each week, more than any other station in the market. As noted in its waiver request, KTLA(TV) and the *LA Times* frequently collaborate on breaking local news stories, including those affecting the safety of Los Angeles residents such as an earthquake in Los Angeles, wildfires in Los Angeles County, and a local commuter rail train

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<sup>55</sup> Comments of NHMC at 8-9.

<sup>56</sup> See, e.g., Comments of Tribune at 15-16.

<sup>57</sup> See Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADB, MB Docket No. 10-104.

crash.<sup>58</sup> The two organizations also have collaborated on investigative reports. For its reporting, KTLA has been honored with numerous local Emmy awards for its newscasts and breaking news coverage, and the *LA Times* also has been honored with many journalism awards, including 41 Pulitzer Prizes.<sup>59</sup> At the same time, the two organizations retain separate editorial control and discretion. The result are two separate news organizations which improve and enhance public service without impairing diversity. Instead of serving as any basis for retaining the NBCO Rule, Tribune's cross-ownership in Los Angeles serves as an example of the benefits of cross-ownership.

**2. Cross-ownership should not be prohibited for fear of harm to free newspapers.**

In a separate effort to convince the Commission to retain the NBCO Rule, the Association of Free Community Newspapers ("AFCN") asserts that the NBCO Rule is necessary to protect smaller, primarily free, newspapers from competing against the "monopoly" maintained by dominant large daily newspapers.<sup>60</sup> AFCN asserts that larger newspapers have abandoned the coverage of local issues, and that the NBCO Rule should be retained to protect free community newspapers from further competition from new cross-owned media properties.<sup>61</sup> As its daily newscasts and newspaper reports demonstrate, Tribune strongly denies that it has abandoned coverage of local news in any of its five cross-owned markets. As has been shown in its comments in this proceeding, Tribune's cross-ownerships actually increase its media

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<sup>58</sup> *See id.*

<sup>59</sup> *Id.*

<sup>60</sup> Comments of AFCN at 8.

<sup>61</sup> *Id.* at 7-8.

properties' ability to cover local issues, and the Commission and the Third Circuit have repeatedly recognized this public benefit.<sup>62</sup>

In essence, AFCN asks the FCC to retain the NBCO Rule to prevent its members – other publishers of newspapers – from having to compete against larger newspapers providing enhanced coverage of local issues. AFCN's competitive concerns illuminate the core problem underlying the NBCO Rule– it prevents broadcasters and publishers of daily newspapers from combining forces to improve coverage of important local issues in their communities. In short, AFCN is asking the Commission to ignore the resulting public interest benefits and to protect specific competitors. The Commission's rules, however, are not designed to protect competitors, but rather to ensure that the public has access to diverse sources of news and information from the broadcasters it licenses. The Commission has refused repeatedly to prohibit common ownership simply to protect specific competitors.<sup>63</sup> The Commission should not retain the NBCO Rule merely because a group of publishers seeks to inhibit the ability of their competitors to adapt to the new electronic media age and cover the news more efficiently and effectively.

Moreover, AFCN's proposed basis for retention of the NBCO Rule would be an exercise of Commission authority premised solely on the basis of competition between newspaper publishers. As Tribune has previously stated, the Commission's jurisdiction to regulate the ownership of newspapers is problematic,<sup>64</sup> and has survived scrutiny in the past only

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<sup>62</sup> See Comments of Tribune at 13.

<sup>63</sup> “[O]ur settled policy, affirmed by the courts, [is] that our duty is to ‘protect competition, not competitors.’” *Structure and Practices of the Video Relay Services Program*, 26 FCC Rcd. 17367, 17399 (2011) citing *Bell Atlantic Mobile Systems and NYNEX Mobile Communications Co., Memorandum Opinion and Order*, 12 FCC Rcd. 22280, 22288 (1997); *SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

<sup>64</sup> See Comments of Tribune at 67-68.

where it was based on the Commission's concern with the licensing of broadcast stations. Where AFCN seeks to have the Commission assert its regulatory authority over daily newspaper ownership to affect competition between daily newspapers and other competing community newspapers, rather than as an effort to preserve diversity in the broadcast arena, the justification for such regulation under *Red Lion* and *FCC v. NCCB* disappears.<sup>65</sup> Like every other participant in the new media marketplace, daily newspapers and other local community newspapers should be free to structure their ownership and business relationships according to the dictates of the market, and not an outdated rule that inhibits some competitors and protects others.

**D. Newspapers Are Facing Severe Financial Difficulties and the NBCO Rule Inhibits Their Ability to Adapt to the New Electronic Age.**

Free Press asserts that newspaper publishers are not suffering economic decline or disproportionate financial struggle, and are still showing profit margins approaching twenty percent, therefore NBCO Rule liberalization apparently is unwarranted.<sup>66</sup> In support, Free Press cites SEC filings of three publishers for 2011, and provides the purported operating margins for only two of them (McClatchy and Gannett).<sup>67</sup> Neither the operating margin for McClatchy nor Gannett reaches 19%, and even if these statistics represented "profit" margins (which they do not), they in no way demonstrate that the printing of daily newspapers yields such margins. Free Press simply has repeated its outdated general assertion of newspaper profitability, emblematic of the highly-selective approach Free Press has applied to statistical analysis since its comments in the 2002 biennial review. Rather than rely on the general and outdated statistical assertions of Free Press, the Commission should rely on the more recent and specific statistics included in its

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<sup>65</sup> See *Red Lion*, 390 U.S. at 393; *NCCB*, 436 U.S. at 801.

<sup>66</sup> Comments of Free Press at 36.

<sup>67</sup> *Id.*

Waldman Report on the future of media, as well as those of the Newspaper Association of America (“NAA”).

In the Waldman Report, the staff stated:

Newspapers across the country have experienced severe cutbacks during the past decade, which has undermined their ability to perform their role as the nation’s watchdog. Ad revenue dropped nearly 48 percent between 2005 and 2010, and with it the industry’s annual spending on reporting and editing capacity dropped by \$1.6 billion from 2006 to 2009, a reduction of more than 25 percent.<sup>68</sup>

As the Waldman Report recognized, newspaper print revenue fell by more than 50% from 2000 to 2010, and although publishers have gained advertising revenue from website sales, online advertising revenue has not come close to making up the difference in advertising dollars lost from print editions across the industry, with the net loss more than \$23 billion.<sup>69</sup> In the Waldman Report, the staff further noted that newspaper classified advertising was “hit the hardest,” as consumers and advertisers turned to cheaper and more efficient alternatives available online, including sources like Google, Craigslist, and niche websites for specific products and services.<sup>70</sup> Overall, in 2010, newspapers’ national advertising revenues were down to \$4.2 billion from a high of \$8 billion in 2004, while newspapers’ retail advertising revenues were down to \$12.9 billion from a high of \$22 billion in 2005.<sup>71</sup> Given these findings against the backdrop of continuing reports of industry layoffs, the Commission can hardly conclude that newspaper

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<sup>68</sup> *Id.* at 34 (citations omitted).

<sup>69</sup> *Id.* at 39 (newspaper print advertising revenue drops from \$48.7 billion to \$22.8 billion from 2000 to 2010; online ad revenue for the entire newspaper industry increases by \$1 billion from 2005 to 2010, but “print advertising lost \$24.6 billion”). *See also* Newspaper Association of America, Newspaper Websites (Nielsen), *available at* <http://www.naa.org/TrendsandNumbers/Newspaper-Websites-Nielsen.aspx> (newspaper print advertising down \$24.6 billion from 2005 to 2010).

<sup>70</sup> *Id.* at 39-40.

<sup>71</sup> *Id.* Between 2000 and 2010, revenue from advertisements for employment, real estate, vehicles and small items, which previously had accounted for 40% of newspapers’ total print advertising revenue, fell by 71% from \$19.6 billion to just \$5.6 billion. *Id.*

publishers are not facing the urgent need to transition to the age of electronic delivery of information, including the need to reorganize businesses based on the daily delivery of printed text that are at the heart of the restrictions contained in the NBCO Rule.

NAA's filing, likewise, confirmed the trends and problems faced by newspaper publishers.<sup>72</sup> As NAA demonstrates, "both of the newspaper industry's traditional revenue streams — circulation and advertising — have been affected."<sup>73</sup> According to NAA's statistics, paid daily newspaper circulation "has diminished to World War II-era levels, even though the number of households in the United States (and therefore, potential subscription base) is three times larger."<sup>74</sup> With respect to newspaper print advertising revenues, NAA data indicates that revenue overall "dropped 47 percent" from 2005 to 2009.<sup>75</sup> Consistent with the FCC staff's Waldman Report, NAA indicates that with respect to online opportunities, "newspapers are still experimenting with various business models to find new content monetization strategies that will enable them to sustain substantial newsrooms."<sup>76</sup>

As NAA has demonstrated, consistent with Tribune's comments on the NPRM<sup>77</sup> and recognized in the Commission's Waldman Report, the current struggles of the newspaper publishing industry are real, significant, and disproportionate to other industries in the economy.

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<sup>72</sup> Comments of NAA at 5-6, 10-11.

<sup>73</sup> *Id.* at 5.

<sup>74</sup> *Id.* at 5-6, citing the Waldman Report, at 35, 38 and Newspaper Association of America, Total Paid Circulation, <http://www.naa.org/TrendsandNumbers/Total-Paid-Circulation.aspx>; U.S. Census, Families and Living Arrangements, Table HH-1. Households, by Type: 1940 to Present, <http://www.census.gov/population/www/socdemo/hh-fam.html#ht> (each last visited Feb. 28, 2011).

<sup>75</sup> See Newspaper Association of America, Advertising Expenditures, <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> (last updated Mar. 2010).

<sup>76</sup> Comments of NAA at 12.

<sup>77</sup> Comments of Tribune at 45-52.

Tribune and other owners of traditional media properties are not seeking any favoritism in advocating the repeal or liberalization of the NBCO Rule. The goal is merely to be treated on grounds equivalent to all other media, including cable and satellite MSOs, telephone company providers of video service, Internet Service Providers, and Online Service Providers of information. Newspaper publishers merely seek to have the same ownership restrictions that are applied (or not applied) to other media as they adapt to the online era.

In its advocacy to retain the NBCO Rule in its current, 1975 form, Free Press attempts to use Tribune's bankruptcy proceeding to cloud the issues regarding the NBCO Rule's efficacy, arguing that as a leader in cross-owned properties, Tribune's debt and bankruptcy are somehow a referendum on the value of cross-ownership.<sup>78</sup> Free Press also asserts that Tribune should not be "bailed out" by elimination or relaxation of the NBCO Rule.<sup>79</sup> Free Press is using the politically charged "bail out" rhetoric in place of any actual facts. It provides a gross over-simplification of Tribune's bankruptcy proceeding which has no effect on Tribune's advocacy for liberalizing the NBCO Rule, a position Tribune has argued for many years. As to the credibility of its news operations, Tribune has had a long and active leadership role in news publishing and broadcasting. It has published its flagship newspaper, *The Chicago Tribune*, since 1847. Its first AM station, WGN, signed on the air as an original "clear channel" signal in 1924, and three of Tribune's cross-owned television stations, WGN-TV in Chicago, WPIX(TV) in New York, and KTLA(TV) in Los Angeles, have provided more than 60 years of continuous service to the American public. Despite decades of change, Tribune's recognized commitment to the gathering

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<sup>78</sup> Comments of Free Press at 37.

<sup>79</sup> *Id.* If Tribune's cross-ownerships were somehow the problem with Tribune's operation, instead of a manner for Tribune to continue to provide enhanced quality news operations, it is difficult to see how elimination or waiver of the NBCO Rule would be a "bail out" for Tribune.

and presentation of news and information to the American public via print, broadcast and now the Internet has not wavered.<sup>80</sup>

Whatever the source of the need for Tribune's financial restructuring, throughout the fifteen years of these proceedings, Tribune's primary argument has never been that cross-ownership is essential to enhance the profitability of media ventures, but that cross-ownership benefits the public by permitting more thorough and insightful coverage of news and information without any significant threat to diversity of viewpoint. In fact, cross-ownership helps to maintain substantial newsroom operations because common ownership permits expenses for combined properties that could not be justified for the media properties individually.

To the extent the NBCO Rule has had any impact on the financial difficulties of Tribune, it is the disproportionate burden the cross-ownership rules place on restructuring efforts Tribune might strive to make in the new electronic media age and the costs and uncertainties inherent in repeated requests for waiver of the NBCO Rule. As Tribune has argued here, there are little to no benefits advanced by the NBCO Rule and it is time to free newspaper publishers to pursue the same kinds of economies of scale or relationships available to other media. The NBCO Rule prohibits the common control of certain daily newspapers and television stations and discourages meaningful investment in newspaper companies by entities that also hold or seek to invest in broadcasters. No other class of media is subject to the same restriction. While common

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<sup>80</sup> Free Press's absolute disregard for Tribune's century of public service through its broadcast stations and newspaper publications should not be countenanced. As Tribune has illustrated in its comments in the 2002 biennial review and the 2006 quadrennial review and now the 2010 quadrennial review, Tribune has been a leader in the collection and dissemination of news, information and programming. *See also* Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428AEL, MB Docket No. 10-104; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADP, MB Docket No. 10-104; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADV, MB Docket No. 10-104; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADY, MB Docket No. 10-104; Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADX, MB Docket No. 10-104.

investment and control of broadcasters can be maintained by cable television MSOs, satellite service providers and any other media, the NBCO Rule prohibits only common investment in newspaper publishers and such broadcasters. The Commission should repeal completely this discriminatory provision.

**E. The Proposed Adjustments to the NBCO Rule are Insufficient Given the Weight of Evidence and are Arbitrary and Capricious as a Matter of Law.**

If the Commission elects to revise rather than repeal the NBCO Rule in its entirety (as is warranted by today's media marketplace), it should abandon the excessive restrictions that were adopted five years ago in the 2006 quadrennial review, and avoid further attaching arbitrary and capricious limitations on cross-ownership.

**1. Limiting NBCO Relief to Top 20 Markets is Arbitrary.**

In its comments, Tribune maintained that the Commission's now five-year-old decision to draw a line at the top twenty markets for the "presumptive" permissibility of newspaper-broadcast cross-ownership was arbitrary and capricious, especially in that the line-drawing was based upon the comparison of average market size and voice counts between the top twenty markets and markets 20 through 30.<sup>81</sup> If the Commission wishes to adopt a "bright line" test based on voice counts, it should adopt a rule that relies on such counts and considers all media that contribute to the diversity of available media sources of news, information and opinion in a market. To fail to count some voices, such as the Internet or to allocate artificial or insufficient credit or counts for others is arbitrary and capricious and not reflective of market circumstances. In fact, the Commission's own statistical voice counts demonstrate that almost every media

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<sup>81</sup> Comments of Tribune at 54-56.

market in the United States has counts that approach a reasonable measure of diversity.<sup>82</sup> Comments provided by many others, including Belo Corp. (“Belo”), Cox Media Group (“Cox”), Cedar Rapids Television Company (“Cedar Rapids”), Fox Entertainment and Television Holdings (“Fox”), LIN Television Corp. (“LIN”), and the National Association of Broadcasters (“NAB”), provide significant additional support for the view that the “bright line” drawn at the top 20 markets is arbitrary and capricious.<sup>83</sup>

It is simply arbitrary and capricious to fashion a rule designed to ensure content diversity and to count only television and newspapers, as other media that contribute to content and viewpoint diversity in a market must be meaningfully figured into the analysis. In their comments on either the NBCO Rule or the local television ownership rule, NAB and these media companies have focused on the purpose of the ownership rules, and encouraged the Commission to consider all of the factors that impact the availability of news, information and opinion in a market. Simply put, in fashioning its rules, the Commission must account for additional sources besides newspapers and broadcast television.<sup>84</sup> Cox specifically has proposed a rule that would not only include a count for newspapers and television stations, but also would include radio stations, cable and satellite television services, and the Internet, with the latter two only “counting” as one voice each.<sup>85</sup> Tribune agrees that all of these media are sources that contribute to the diverse array of information available in a media market and must be considered in any

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<sup>82</sup> *2010 Quadrennial Regulatory Review*, MB Docket 09-182, *Notice of Proposed Rulemaking*, ¶ 105 (2011) (the “*2011 NPRM*”). The Commission found that counting only television stations and daily newspapers there were, on average, nine major voices in markets 21-50 and, on average, seven major voices in markets 51-210.

<sup>83</sup> Comments of Belo at 9-10; Comments of Cox at 26-28; Comments of Cedar Rapids at 13; Comments of Fox at 23-26; Comments of LIN at 21-23; Comments of NAB at 39-47.

<sup>84</sup> *See, e.g.*, Comments of Cedar Rapids at 11; Comments of Belo at 9; Comments of Cox at 26-28.

<sup>85</sup> Comments of Cox at 26-28.

rational count. Because viewpoint diversity is the only goal purportedly served by the NBCO Rule, any retention of the rule must consider the contributions to viewpoint diversity of these alternative media.

While Cox, Tribune, Fox, NAB and NAA all agree that today's media markets are sufficiently competitive and diverse to warrant the complete elimination of the NBCO Rule, at a minimum, the comments demonstrate that any new cross-ownership rule should be no more restrictive than the rule applied to local television station ownership. As the Commission has recognized, the local television ownership limits are intended to promote both the goals of diversity in programming and competition between television stations.<sup>86</sup> Since its first biennial review, the Commission has recognized that the NBCO Rule no longer is necessary to foster competition.<sup>87</sup> In order to foster diversity, given the vast array of media voices in every market, the Commission's prohibition should be no more restrictive than this count, and as the Commission recognized in the NPRM in this proceeding, counting only television stations and daily newspapers, on average, there are "nine major voices" in markets 21-50, and, "on average," "seven major voices" in markets 51-210.<sup>88</sup> When considered, the voices of radio stations, cable and satellite channels, and Internet websites all increase the numbers of voices counted in each market.

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<sup>86</sup> See *NPRM*, ¶ 25.

<sup>87</sup> See, e.g., *2003 Order*, ¶¶ 330-342, 356-367. See also *Prometheus Radio Project v. FCC*, 373 F.3d 372, 400-401 (3d Cir. 2004) ("*Prometheus I*") ("Given the Commission's goal of balancing the public's interests in competition, localism, and diversity, it reasonably concluded that repealing the cross-ownership ban was necessary to promote competition and localism..."); *2006 Quadrennial Regulatory Review*, 23 FCC Rcd. 2010, 2021, ¶ 18 ("*2008 Order*") ("[W]e reaffirm the Commission's decision to eliminate the blanket ban on newspaper/broadcast cross-ownership...").

<sup>88</sup> *2011 NPRM*, ¶ 105.

The use of these “average” counts, thus is problematic in that it also underestimates the true diversity of many markets below the top twenty. For example, in the Hartford-New Haven DMA (Market 30), there are seven different television station operators and eight different publishers – significantly more than the average “nine major voices” characterizing markets 21 through 50 – even without considering radio stations, independent websites (originating from both inside and outside of the market), local or national news and information channels provided by cable or satellite, or weekly newspaper publications. In Hartford-New Haven there are at least 77 radio stations with 45 separate radio station owners, four independent local news channels (and four other cable sports channels) available through MVPDs, and 18 independent websites that had more than 10,000 unique visitors during 2009.<sup>89</sup> These radio stations, local cable and satellite channels, and locally-focused websites all contribute to the diversity of information in the market, and cannot be ignored in evaluating the reasonableness of any cross-ownership restriction that the Commission proposed to adopt.

## 2. **The Application of A Top-4 Restriction is Arbitrary.**

As part of its NBCO Rule proposal, the Commission plans to restrict top-4 broadcast stations from having common ownership with daily newspapers.<sup>90</sup> With the exception of Fox,<sup>91</sup> there is almost no discussion in the comments of the propriety of the proposed restriction on top-4 broadcast station common ownership with daily newspapers. A top-4 restriction is arbitrary and capricious and harms the public because it prevents the use of potentially stronger news combinations between television news operations and publishers. Stronger news combinations

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<sup>89</sup> Tribune Comments on NOI, filed July 12, 2010, at 58-64; Comments of Tribune at 27.

<sup>90</sup> 2011 NPRM, ¶ 108.

<sup>91</sup> Comments of Fox at 25-27.

would bolster television stations and newspapers as well as provide more coverage of news and local issues. As Fox demonstrates, the restriction on cross-ownership between top-4 rated stations and newspapers prevents television station owners with the greatest experience and resources from combining forces with daily newspapers, and undermines the ability of commonly owned properties to better cover news and local issues.<sup>92</sup> Fox also demonstrates that the top-4 restriction violates the First Amendment because it precludes speakers from acquiring additional outlets based upon the popularity of their speech.<sup>93</sup>

Aside from the loss of the potential benefits to the public from enhanced news coverage and the violation of the speakers' First Amendment rights, there is no benefit achieved by restricting such combinations. Newspapers do not compete with top-4 broadcast stations any more or less than they compete with stations that are not ranked in the top-4. The Commission seems to presume that top-4 ranked stations already have access to network or other strong sources of funding for news operations; however, that presumption does not apply in every case, and does not necessarily reflect a station's ability to add or enhance coverage of *local* issues. Moreover, the Commission can make no such presumption with regard to the ability of newspapers in a market to sustain substantial newsgathering operations. Finally, the Commission should not maintain such a restriction merely in the hope that being foreclosed from combining with a top-4 television station, a publisher will seek out a lower-rated television station. The market will more appropriately provide for or against such combinations. Given the absence of any compelling reason to maintain a restriction on the cross-ownership of a daily newspaper and a top-4 rated television station, the Commission should not simply "borrow" the

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<sup>92</sup> *Id.* at 26.

<sup>93</sup> *Id.* at 27.

top-4 restriction from the local television ownership rule. While that rule attempts to preserve competition between stronger television stations, no such objective is achieved with respect to the NBCO Rule.

**3. Expanding the NBCO Rule Throughout DMAs is Arbitrary and Capricious and Inconsistent with the FCC’s Findings.**

Tribune agrees with Cox, Cedar Rapids, NAB and Belo’s assessment that the FCC’s proposal to expand application of the NBCO Rule by adopting a DMA definition in lieu of the analog Grade A contour overlap is overbroad and inappropriate<sup>94</sup> and flatly contradictory to the findings in past FCC reviews.<sup>95</sup> NAB suggests that this expansion may unjustifiably invoke the rule for at least 24 new combinations,<sup>96</sup> and as Tribune indicated, do so where the commonly-owned properties have no significant overlap in the markets that they serve.<sup>97</sup>

The Commission is certainly capable of adopting a new digital city-grade coverage contour that approximates the “Grade A” contour maintained in the rule’s definition for more than 35 years.<sup>98</sup> NAB suggests that the Commission use a definition tied to the station’s digital city grade contour, which Tribune agrees much more closely approximates the Grade A contour that was adopted for application of the NBCO Rule.<sup>99</sup> Alternatively, and perhaps more simply,

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<sup>94</sup> Comments of Cox at 22-23; Comments of Cedar Rapids at 14-15; Comments of NAB at 47-48; Comments of A. H. Belo at 12-13.

<sup>95</sup> *2002 Biennial Regulatory Review*, 18 FCC Rcd. 13,620, 13,74-54, 13,760-61, ¶¶ 330-342, 356-367 (2003); *2006 Quadrennial Regulatory Review*, 23 FCC Rcd. 2010, 2021, ¶ 18 (2008).

<sup>96</sup> Comments of NAB at 48.

<sup>97</sup> *See* Comments of Tribune at 61-62.

<sup>98</sup> *See* Comments of NAB at 48; Comments of Cedar Rapids at 14-15; Comments of Cox at 23.

<sup>99</sup> *See* Comments of NAB at 48.

the FCC could adopt a mileage limit that replicates the general reach of the Grade A contour.<sup>100</sup> Either of these alternatives is less arbitrary than applying any restriction across the entire DMA, which extends the application of the rule far beyond where there is any nexus between the service of the two media properties.<sup>101</sup> Such an action that expands the rule irrespective of any actual geographic nexus between a television station and a newspaper would not only serve as a classic example of arbitrary and capricious rulemaking, but would so serve at a time when Section 202(h) and the media marketplace suggest that the rule should have far less prohibitive impact – not more.

Finally, if it expands the reach of the NBCO Rule to the entirety of a DMA, the Commission should “grandfather” existing combinations that are currently permitted under the more restrictive 1975 prohibition, and make them freely transferable, and not force divestitures and the further disruption of existing news operations.<sup>102</sup> Only one commenter suggests that the Commission should require further divestitures of properties,<sup>103</sup> and that comment is bereft of any logic that would support the forced divestiture of permissibly combined media properties that neither serve the same communities nor have any significant overlap in the population that they serve.

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<sup>100</sup> See Comments of Cedar Rapids at 15; Comments of Cox at 23.

<sup>101</sup> See Comments of Tribune at 61-62.

<sup>102</sup> See *id.* at 62; Comments of Cedar Rapids at 15-16.

<sup>103</sup> Comments of Office of United Church of Christ, Inc., at 25-26.

### III. Duopoly Rule.

#### A. If Retained at All, The 8-Voices Test Should Be Reduced and Include Other Non-Television Media.

Tribune expressed support in its comments for modernizing the “8-voices” test – one prong of the exception to the local television ownership rule.<sup>104</sup> The test allows television station duopolies if eight independently-owned full power television stations remain in the market.<sup>105</sup> The 8-voices test currently does not take into account any other local voices available in a market such as local websites or blogs on the Internet and local content on MVPDs. Tribune agrees with NAB, Cedar Rapids, and LIN that the test should be relaxed given the present media marketplace to lower the voice count and include in such counts additional, alternative non-full power television station voices. Sources that did not exist when the duopoly rule was first enacted now provide significant alternatives to the programming provided by broadcast television stations.<sup>106</sup> Requiring eight independently owned and operated television stations is also completely arbitrary. As the commenters demonstrated, eight remaining independent television voices does not provide any measurable amount of increased competition beyond, for example, six or seven independently owned television stations.<sup>107</sup> In fact, it is likely that there are far more viewers

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<sup>104</sup> Comments of Tribune at 70-73.

<sup>105</sup> 47 C.F.R. § 73.3555(b)(ii). A duopoly also cannot combine two stations ranked in the top four in the market. 47 C.F.R. § 73.3555(b)(i).

<sup>106</sup> Comments of NAB at 27-28; Comments of Cedar Rapid Television Company at 13; Comments of Grant Group, Inc. at 9-10; Comments of Gray Television at 8; Comments of LIN Television Corp. at 21; Comments of Nexstar Broadcasting at 19-21.

<sup>107</sup> *See id.*

and advertisers looking to channels only on MVPDs and websites in a given market than broadcast stations near the bottom of the ratings list.<sup>108</sup>

At a minimum, the rule should reflect the diversity of sources for video programming and news and information in the modern media marketplace. As Tribune has shown in its cross-ownership markets, these alternative media provide independent sources of news and information including cable news stations; public, educational, and governmental (“PEG”) channels; and local and hyper-local websites and blogs. A reformed “voices” test at a minimum should lower the voice count and, even further, should count the Internet and services provided by MVPDs.<sup>109</sup>

Several commenters have suggested that multicasting is a substitute for multiple ownership, and thus makes common ownership of local television stations unnecessary.<sup>110</sup> Multicasting, however, does not eliminate the need for relief from the restrictive duopoly limits as currently applied.<sup>111</sup> As many commenters have demonstrated, multicasting is still in its formative stages.<sup>112</sup> Many multicasting channels are not available to viewers, either because their tuners or television sets are not capable of receiving the multicasted channels, or because

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<sup>108</sup> The Commission has recently obtained Congressional authority to reallocate portions of television broadcast spectrum to other services. Middle Class Tax Relief and Job Creation Act, Pub. L. No. 112-96, §§ 6001 et seq. (Feb. 22, 2012). This is fully consistent with the conclusion that in some markets low rated broadcast stations are less attractive to viewers than MVPD channels or websites. If broadcast stations surrender their spectrum pursuant to Commission implementation of this new law, then it is not reasonable for the Commission to maintain the same 8-voices broadcast station count because the reduction in broadcast stations was a logical result of the Commission’s initiative and market forces. By embracing reallocation, the Commission and Congress have indicated that the public is not harmed by a reduction in the number of broadcast television stations, in largest part because in this electronic age, significant alternatives exist.

<sup>109</sup> *See, e.g.*, Comments of Cox at 28.

<sup>110</sup> *See, e.g.*, Comments of Free Press at 44-45.

<sup>111</sup> NPRM at ¶ 26.

<sup>112</sup> *See, e.g.*, Comments of Belo at 11-12; Comments of NAB at 30-31; Comments of LIN at 18-19.

the subchannels are not carried by local cable or satellite providers. As the Commission is aware, multichannel video program distributors are not required to carry more than the main broadcast channel.<sup>113</sup> Whatever the future holds for multicasting, it currently is no substitute for the public interest and programming benefits that can be delivered and the economies of scale that can be achieved through the common ownership of stations in a market.

**B. Sharing Agreements Should Not Be Attributable.**

The Commission also has sought comment on whether various forms of content or back-office resource “sharing” agreements should be attributable.<sup>114</sup> As Tribune explained in its comments, critics of sharing agreements do not understand their actual purpose and function, which are much more limited and beneficial than proponents of their attribution have maintained.<sup>115</sup> Critics such as Free Press, UCC and some multichannel video program distributors, fail to fully credit the purpose of the Commission’s attribution rules and why attribution of these types of agreements will not further the purpose underlying the multiple ownership rules. Instead, as noted by many media companies including Fox, Cox, LIN, and New Vision Television, these arrangements provide efficiencies that redound to the public’s benefit without having any material impact on stations’ core operating functions that give rise to attribution – namely programming decisions, personnel matters or financial control.<sup>116</sup>

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<sup>113</sup> *Carriage of Digital Television Broadcast Signals*, CS Docket No. 98-120, *First Report and Order and Further Notice of Proposed Rulemaking* at ¶ 54 (2001).

<sup>114</sup> NPRM at ¶¶ 168 et seq.

<sup>115</sup> Comments of Tribune at 73-76.

<sup>116</sup> See Comments of Cox at 17-18; Comments of Fox at 31-37; Comments of Lin at 18-19; Comments of New Vision Television at 9-11.

In their comments, cable companies and pro-regulatory groups both argued in favor of the Commission broadly making sharing agreements attributable.<sup>117</sup> But despite their mischaracterizations, sharing agreements that take the form of local news sharing (“LNS”) arrangements and shared services agreements (“SSAs”) are not agreements to avoid competition or a form of covert consolidation of ownership or its decision-making or management functions. For their part, LNS agreements are akin to news pool arrangements, a common and non-controversial practice that allow stations to share camera footage and other resources.<sup>118</sup> With these agreements, a station has the opportunity to cover an event without sending a videographer to shoot the same press-conference footage as all other stations, while permitting it to use its news resources to cover additional stories that otherwise would have gone uncovered. By entering these agreements, individual stations do not give up their independent authority to decide what stories or issues to cover and how to present the coverage on these issues. Indeed, LNS agreements provide photography only. Each station continues to assign its own reporters and editors to news projects. LNS agreements thus expand a station’s options to cover news, but they do not bind those stations to specific viewpoints or other aspects of decisions regarding coverage.

Likewise, SSAs generally involve the sharing of “back-office” assets and functions that do not constitute a station’s programming decisions, personnel decisions, financial decisions or any other issue that might affect control of the program “viewpoint” presented by a station. Rather, these agreements avoid duplication and repetition of administrative functions, such as

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<sup>117</sup> See, e.g., Comments of Free Press at 49-60; Comments of United Church of Christ, Inc. at 3-19; Comments of the American Cable Association at 13-27; Comments of the Independent Telephone and Telecommunications Alliance at 3-12; Comments of Time Warner Cable Inc. at 4-16.

<sup>118</sup> See, e.g., Comments of Fox at 31-37; Comments of NAB at 64-67.

payroll and accounting functions, or other primarily ministerial or administrative tasks associated with any media business. SSAs therefore are generally removed from determining the content of programming on a station, or making decisions about the hiring and firing of personnel, as are LNS agreements. SSAs allow stations, without sacrificing programming or personnel decision-making authority, to better manage their finances; with such savings, revenue can go towards programming as opposed to supporting overhead costs.

The Commission has previously explained its attribution rules as seeking “to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.”<sup>119</sup> The sharing agreements at issue here have no such relationship to a licensee’s programming decisions or other core operating functions. There are existing tools at the Commission’s disposal to target specific practices and still meet the goals of attribution without adopting a new, overbroad rule that will potentially forbid beneficial agreements that promote efficiency. The Commission can, for example, adjudicate complaints where specific provisions of agreements are believed to provide too much control or influence, as it has previously done.<sup>120</sup> There is no reason to use a meat cleaver where a scalpel will do; if there are discrete rights granted in these agreements that trouble the Commission, it can prohibit those specific practices as it also has done in the past.<sup>121</sup> The Commission should not, however,

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<sup>119</sup> *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd. 12559, 12560, ¶ 1 (1999).

<sup>120</sup> *See, e.g., Ackerly Group Inc.*, 17 FCC Rcd. 10828 (2002).

<sup>121</sup> *See, e.g.,* 47 C.F.R. § 73.3555, n.2(j)-(k) (Specific types of local marketing, time brokerage, and joint sales agreements are attributable).

apply a broad ban on a beneficial practice that will inevitably result in the unintended consequence of lost programming or even service to the public.

Free Press and UCC in particular demonstrate that the Commission’s inquiry into sharing agreements and their proposed policies is truly a solution in search of a problem. Both commenters propose that the mere existence of one of any number of simple arrangements should make an interest attributable. Under their proposal, for example, stations could not share the video feed of a government press conference or a traffic accident without triggering attribution. Stations also could then be forbidden from using the same editing suite or other cost saving shared physical facility if attribution would result in a violation of the local ownership rules. Engaging in any type of joint promotional activity would also implicate attribution, a proposal so vague it could be interpreted as broadly as finding attribution if two stations sponsor the same community event.<sup>122</sup> Causing these types of routine activities to trigger attribution will not preserve diversity or independence. There is simply no demonstrated public interest benefit for treating these as “attributable.”<sup>123</sup> In all likelihood, such attribution would actually reduce a station’s ability to cover local issues and could, in the long term, lead to stations having to end their local news coverage.

Free Press and UCC also propose using Securities and Exchange Commission (“SEC”) reporting definitions in determining whether an interest is attributable.<sup>124</sup> They advocate for attribution if one licensee reports to the SEC that it owns, controls or operates the other

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<sup>122</sup> Comments of Free Press at 59-60; Comments of United Church of Christ, Inc. at 15-20.

<sup>123</sup> *See*, Comments of NAB, at 67-68.

<sup>124</sup> Comments of Free Press at 60; Comments of United Church of Christ, Inc. at 15.

licensee's station.<sup>125</sup> This proposed new approach to attribution is deeply flawed for several reasons. It makes no sense for the FCC to outsource (in this case to the SEC) the responsibility for determining definitions for applying its rules where the purpose underlying the other agency's reporting requirements bears no relationship to the FCC's regulatory focus. In this instance, the SEC's definitions often might create attribution where the FCC would not find a reason for holding an interest to be cognizable. The SEC's rules have a different purpose than the FCC's attribution rules. Free Press and UCC are presumably referring to SEC reporting requirements governed by FASB Interpretation No. 46(R) (FIN 46(R)).<sup>126</sup> FIN 46(R) is the rule used to determine when a reporting company must include entities in which it has a "controlling" financial interest on its consolidated financial statements.<sup>127</sup> The purpose of that reporting is to help those examining financial statements "assess the enterprise's risks."<sup>128</sup> In addition to looking at whether one enterprise "controls" another through voting interests or other significant managerial control, FIN 46(R) looks to require reporting an interest in an entity where the financial risk is dispersed between the enterprises in a manner that might be of interest to an investor.<sup>129</sup> Given these differences and other flaws, it makes little sense for the FCC to adopt the SEC's definitions as a substitute for its own decisions about material influence on a licensee.

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<sup>125</sup> *Id.*

<sup>126</sup> The SEC recognizes FASB as a designated private-sector standard setter. *See Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter*, Securities and Exchange Commission (Apr. 25, 2003) available at <http://www.sec.gov/rules/policy/33-8221.htm>. It is difficult to confirm that this is what they are advocating because there are no details presented.

<sup>127</sup> FASB Interpretation No. 46 at 5 (revised December 2003) available at <http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1175820930817&blobheader=application%2Fpdf>.

<sup>128</sup> *Id.*, at 7.

<sup>129</sup> *Id.*, at 6.

In making such decisions about expanding its attribution rules, the Commission should be careful to avoid the unintended consequences of impairing stations' ability to provide news opportunities or other services that might not otherwise be available. The sharing of certain news-producing assets or purchasing of a news program from any source, including another station, should not result in attribution as long as the purchasing station retains control of the decisions regarding the acquisition and broadcast of that programming. News programming, like all programming on the station, always remains subject to the licensee's editorial discretion. Similarly, simply sharing administrative functions cannot be a ground for attribution where that sharing does not restrict a station's ability to make managerial programming, personnel and financial decisions.

#### **IV. Diversity Proposals Should Be Concurrently Adopted.**

Tribune supports the Commission's goal of enhancing diversity among broadcast licensees.<sup>130</sup> DCS proposes a number of specific initiatives aimed at enhancing media ownership opportunities by women and minorities.<sup>131</sup> DCS's proposals, notably, do not resort to the ineffective policy of needlessly restricting cross-ownership, nor does DCS argue that the Commission's review of diversity initiatives should delay action on other ownership rules.<sup>132</sup>

DCS has identified lack of access to capital as the greatest barrier to minority participation in media, a position supported by a 2008 Government Accountability Office study.<sup>133</sup> Tribune supports many of DCS's proposals that develop or reinstitute programs that

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<sup>130</sup> NPRM at ¶ 147.

<sup>131</sup> Comments of DCS at 21-37; Supplemental Comments of DCS at 4-91.

<sup>132</sup> *Id.*, at 41.

<sup>133</sup> *Id.*, at 8-9.

target this problem, including the FCC's tax certificate policy, which allowed the seller of a media property to defer their income tax payment if the sale was to a minority purchaser. The program was ended in 1995 but should be reinstated as it may encourage more sales to minority purchasers. Tribune also supports the DCS proposal for minority ownership incubation, that would allow broadcasters to exceed certain ownership limits for every new socially and economically disadvantaged voice they "incubate" through financing or other activity. Relaxing foreign ownership rules also would provide a new avenue for securing capital and bring broadcast ownership rules into the 21<sup>st</sup> century, where communications and finance are no longer limited by national boundaries. Cable systems, telephone companies, and other communications media already have relaxed foreign ownership rules and broadcasters should be allowed to follow suit.

Tribune also supports other proposals made by DCS. For example, stations or clusters of stations that do not comply with the media ownership rules should be grandfathered for one year (or permanently) if sold to a small business, encouraging small business purchases.

Additionally, under the Commission's equity debt plus ("EDP") rule, where the financing of a station gives the financier an attributable interest,<sup>134</sup> the Commission should waive attribution where it fosters the construction of a qualifying licensee's unbuilt station. The Commission also should support the expanded use of the Telecommunications Development Fund, which was established by the Telecommunications Act of 1996 as a venture capital fund to support small businesses in the telecommunications industry.<sup>135</sup>

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<sup>134</sup> 47 C.F.R. § 73.3555, n.2.

<sup>135</sup> 47 U.S.C. § 614.

The Commission can also institute programs which will help minority and female-owned broadcasters comply with the Commission's technical rules. The creation of a public engineer position would assist smaller stations with routine engineering matters, reducing their engineering costs and better ensuring compliance with the Commission's rules. The Commission should, similarly, conduct tutorials on radio engineering rules to help smaller broadcasters stay up to date on the rules and best practices to comply with them.

As DCS also suggests, a number of the Commission's existing rules should be modified to better support minority and female-owned broadcasters:

- The existing share-time rule should be used to allow frequency sharing by broadcasters, specifically allowing multicasts and subchannels to be shared.<sup>136</sup>
- The main studio rule requiring broadcasters to locate their main studio within the station's community of license<sup>137</sup> should be relaxed to reduce upfront fixed costs, particularly important to promote minority and female ownership which have difficulty accessing capital.
- The Commission, already having sought comment on rules relaxing construction permit deadlines,<sup>138</sup> should clarify that the proposal also applies to major modification applications, not just new construction permit applications, and allow 18 months for construction.
- For broadcasters unable to take advantage of the 18-month construction permit extension, a blanket one-year extension of the construction permit deadline should be granted for minority and women owned broadcasters, giving a total of three years for new station construction.
- The Commission should authorize interference agreements in its rules so a licensee may create value in spectrum they are not effectively using and allow another licensee to more efficiently use it.

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<sup>136</sup> 47 C.F.R. § 73.715.

<sup>137</sup> 47 C.F.R. § 73.1225.

<sup>138</sup> NPRM at ¶ 168, n.41.

- The Commission should provide additional exceptions in its rules governing contingent applications,<sup>139</sup> gradually relaxing these limits to provide broadcasters with needed flexibility and encourage diverse participation.
- The Commission can relax its principal community coverage rules,<sup>140</sup> providing broadcasters with more flexibility in locating stations.
- The Commission should provide waivers of its regulatory fees on a case-by-case basis, allowing eligible minority and female-owned entities a rebuttable presumption for a waiver, reduced fee or deferral.

Additionally, DCS indicates that the Commission's spectrum auction rules need reform in order to improve access for minority and female-owned broadcasters. The Commission currently provides a new entrant bidding credit, granting a 35% discount on any winning bid to any winner with no attributable interest in any other media of mass communication.<sup>141</sup> DCS proposes that the credit should be increased and other fees should be discounted in order to encourage more new voices in the market. In addition to this proposal, Tribune understands that the auction rules could be reformed to make the process easier and more advantageous for eligible entities.

DCS also proposes a number of other longer-term amendments and statutory changes that will foster diversity of ownership. Tribune supports consideration of these proposals and others that will enhance the opportunities for minority and female-owned entities to acquire interests in media ventures. Of particular importance to the instant quadrennial review, DCS makes these proposals without any suggestion that it would be appropriate to delay long-awaited repeal of the

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<sup>139</sup> 47 C.F.R. § 73.3517.

<sup>140</sup> *See, e.g.*, 47 C.F.R. § 73.625.

<sup>141</sup> 47 C.F.R. § 73.5007.

NBCO Rule. To the contrary, as DCS recognizes, repeal of the NBCO Rule can be accomplished without affecting its goal of furthering diversity of ownership in the media.<sup>142</sup>

## CONCLUSION

For all of the foregoing reasons, the Commission should repeal the NBCO Rule and embrace other reforms to the media ownership rules consistent with the cacophony of voices now serving the American public.

Respectfully submitted,

TRIBUNE COMPANY,  
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<sup>142</sup> See Comments of DCS at 40-41.